

EN BANC

[G.R. No. 128619-21, December 17, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ELEUTERIO DIMAPILIS, ACCUSED-APPELLANT.**

DECISION

VITUG, J.:

On 18 February 1997, the Regional Trial Court of Makati, Branch 136, rendered its decision in Criminal Case No. 96-1769, Criminal Case No. 96-1770 and Criminal Case No. 96-1771, finding accused-appellant Eleuterio Dimapilis guilty beyond reasonable doubt of the crime of rape on three counts and imposing upon him the DEATH penalty in each case. The trial court concluded:

"WHEREFORE, and in consideration of all the foregoing, the Court finds the accused GUILTY beyond reasonable doubt of the crime of rape on three (3) counts as charged in the above-captioned cases, and it hereby sentences the accused, Eleuterio Dimapilis, to suffer the capital punishment of Death for each count, or of three (3) death penalties, and in addition, to pay the offended party moral damages in the sum of P100,000.00; exemplary damages of P50,000.00; and to pay the cost of the suit.

"SO ORDERED."^[1]

The death penalty having been imposed by the trial court, the records were elevated to this Court for automatic review.

Accused-appellant was charged before the court *a quo* with three counts of rape, allegedly committed in September 1994, February 1996, and May 1996, all in the City of Makati, Metro Manila, Philippines. The three separate informations against the accused read:

In Criminal Case No. 96-1769:

"That in September, 1994, at Batute St., Makati City, within the jurisdiction of this Honorable Court, accused ELEUTERIO DIMAPILIS, did then and there, willfully, and unlawfully and feloniously with force and intimidation, at knife point, had carnal knowledge of his step-daughter, SHARON SALAS y DEGALA then ten (10) years old, against her will and consent.

"CONTRARY TO LAW."

In Criminal case No. 96-1770:

"That in February 1996, at San Antonio Village, Makati City, within the jurisdiction of this Honorable Court, accused ELEUTERIO DIMAPILIS, did then and there, willfully, and unlawfully and feloniously with force and intimidation, at knife point, had carnal knowledge of his step-daughter, SHARON SALAS y DEGALA against her will and consent.

"CONTRARY TO LAW."

In Criminal Case No. 96-1771:

"That in May, 1996, at Makati City, within the jurisdiction of this Honorable Court, accused ELEUTERIO DIMAPILIS, did then and there, willfully, and unlawfully and feloniously with force and intimidation, at knife point, had carnal knowledge of his step-daughter, SHARON SALAS y DEGALA against her will and consent.

CONTRARY TO LAW."^[2]

The cases were tried jointly. The reception of the evidence shortly followed after the accused had entered his plea of "Not Guilty" at the arraignment.

The trial court, in its decision, narrated quite adequately the respective versions of the prosecution and the defense. Thus:

The Evidence for the Prosecution:

"The private complainant's story in the three above-captioned cases, out of the five, (the two had been allegedly committed by the accused in June, 1993, at Sta. Ana, Manila; and in February, 1994, at FTI, Taguig, hence outside the jurisdiction of this Court), portrays a tragic and sad predicament of a girl who, after her parents separated, finds herself, her brothers and sisters, in a no-choice situation wherein they are to live together with a man, who was supposed to be a substitute-father to them, all because that man is a live-in partner of her mother.

"She is the eldest of the five (5) children born out of the union of her natural father and mother. Next to her is Sheila, who lives with her Lola Violy, and followed by a twins, Josephine and Budoy, the former lives in Tarlac and the latter stays with her aunt in Roxas City; the youngest, Lito, 5, lives with her mother and the accused.

"Sharon's story (the complainant in these cases) chronicles the helpless plight of a girl, at age ten, without a father, and because of compelling circumstances, she and her three small siblings had to depend upon the accused for their sustenance nay, survival, completely unsuspecting that, like some other girls of her age, she too, would fall victim of the heinous crime of rape in the hands of, no less, the common-law husband of her mother.

"Her complaint-story runs this wise:

"Sometime in June, 1993 at 10: 00 in the morning, at Sta. Ana, Manila,

while her sisters were sent out of the house after giving them money, and while her mother and the accused Eleuterio Dimapilis were already living together as husband and wife, the said accused, using a knife, threatened her with bodily harm and required her to undress. With the accused also undressed, he put his finger into her vagina and tried to insert his penis. Later on, the accused rubbed his penis into her private organ. Her mother, and her Aunt Alice were out of the house gambling somewhere at Batute Street.

"This sexual abuse against her was repeated by the accused under the same circumstances: In February, 1994 in the evening at FTI, Taguig, Rizal, and while her sisters were taking a bath in the rain, she was similarly threatened by the accused with a knife and forced her to undress and then the accused also undressed, they laid down: and then accused fingered her vagina. When accused can not insert his penis, he rubbed it into her vagina. (p. 5, TSN, Nov. 20, 1996).

"In September, 1994, again, accused raped her at 1: 00 in the afternoon, at Batute St., Makati, while her sisters and brother were playing in the backyard, again, with the use of a knife and threatening her with bodily harm, she was told to undress and the accused himself also disrobed and tried to insert his penis against her vagina. She saw white liquid coming out the penis of the accused. This happened while her mother and her Aunt Alice were out gambling and they usually come home at 8: 30 in the evening.

"Again, the same incident was followed twice, sometime in February and May of 1996, both at PNR, San Antonio Village, Makati. Despite the pain she felt and as she cried, she did not shout or ask for help because the accused was poking a knife at her (p. 6, T.S.N., Nov. 20, 1996). In February, 1996, at 2: 00 p.m., when her brother and sisters were playing, she was sexually abused by the accused under the same way and circumstances - the use of a knife and under threat of being killed if she resists as previously employed by the accused.

"In the same place in May, 1996, at 3: 00 in the afternoon and while her brothers and sisters were playing outside, again, and the accused sexually molested her. The accused, undressed and she, without clothes, lied down behind the door, their bodies blocking it from being opened. (pp. 12-13, T.S.N., Nov. 21, 1996).

"After being sexually abused for at least five (5) times, she mustered enough courage to report to her mother, Linda Degala, the date of which she could no longer recall, and her mother promised to look into the truth of her complaint. Later on, her mother just shrugged off her complaint by branding the acts of the accused being complained of were just 'lambing.'

"Thus, on May 19, 1996, she reported to her 'Lola Violy' the sexual abuses committed against her and she was brought to the National Bureau of Investigation on May 20, 1996 where she filed a complaint against the accused and she was investigated by NBI agent Gil C.

Maciano (on May 23, 1996) at the NBI Headquarters at Taft Ave., Manila, and to whom she gave a sworn statement (Exhibits 'A.' 'A-1' and 'A-2'). Also at the NBI, She was examined by a medico-legal doctor. On July 14, 1996, she executed a 'Karagdagang Salaysay' (Exhibited 'B' to 'B-2'). She gave additional sworn statement, dated July 14, 1994 (Exhibit 'C').

"Explaining the modus operandi of the accused, Sharon, the complainant, said that, in June, 1993 while her family was staying in Sta. Ana, Manila, she leaves the house early at 6:00 a.m. in going to school, and comes home at 12:00 noon, and at 4:00 p.m. that day she was sexually abused by the accused since only the two of them were in the house because the accused, (whom she calls 'papa') had sent her brothers and sisters out of the house after giving them money. The accused was not working then because he had a fever.

"Then, in February, 1994, at FTI, Taguig, Rizal, the accused who came home at 7:00 in the evening allowed her brothers and sisters to take a bath in the rain as the accused committed the act of raping her.

"In September of 1994, at Batute St., Makati City, the third in series, the accused committed the sexual act inside the house while her brothers and sisters were playing at the backyard; and the fourth incident happened in February of 1996, at 2:00 in the afternoon, at PNR, San Antonio Village, while her brothers and sisters were laying in front of the house; the jeepney driven by the accused had bogged down; and in May, 1996, at about 3:00 p.m., also at PNR, San Antonio Village, Makati, she was raped by the accused while again, her brothers and sisters were playing outside the house.

"In these series of rape incidents, she had not shouted for help because accused was pointing a knife at her and threatened to kill her (pp. 12-14, TSN, Nov. 21, 1996). In fact, after the accused had finished raping her, the accused would still poke the knife at her even in the presence of her brother and sisters, and the accused would say that 'she and the accused were just playing' (p. 15, TSN, Nov. 26, 1996).

"Her 'Lola Violy' whose full name is Violeta Benjamin, testified that it was while she was on her way home on May 19, 1996, when she overheard Sharon's mother (Linda Salas), Alma Bayot, Rosemarie Trapisora, her nieces, arguing among themselves and then Linda Salas shouted 'it is none of your business, she is my daughter' thus, prompting her to go upstairs and inquired what the matter was all about. Sharon was there present, and whom she asked why the former did not like to come home with her mother and Sharon complained that she could no longer bear what her 'step-father' was doing to her: 'hindi na raw po niya makayanan ang pakikialam sa kanya ni Dakila' (accused Eleuterio Dimapilis).

"She then, and there, brought Sharon on that same day, May 19, 1996 to the NBI, and, the following day, May 20, 1996, Sharon was medically examined and investigated. A medical certificate was issued by Dr. Aurea B. Villena, a medico-legal officer II of the NBI who testified that she noted in Sharon's private organ a healed superficial hymenal laceration at

3 o'clock position. Her medical findings are contained in a report under Case No. MG-96-744 (Exh. 'F'). The laceration she noted in the private organ of the complainant occurred more than three (3) months before May 20, 1996. In the course of conducting the medical examination, she interviewed Sharon about the incident and the former claimed that in 1993, while dressing up, the accused entered the room and then and there placed his finger into her private part and that, it was in 1995 that the accused penetrated the genital part of her organ. It is probable that penetration was committed in September, 1994 (p. 7, T.S.N., Dec. 3, 1996). When she was raped by the accused for the first time in June, 1993, she was only ten years old (p. 6, T.S.N., Nov. 28, 1996), she having been born on February 13, 1983 (Exh. 'D'). The old healed superficial laceration found in the private organ of Sharon was up to half of the width of the hymen; and that, the superficial laceration can be caused by the penetration of the tip of the penis into the hymen of the vagina. The hymenal laceration is compatible with the commission of the offense."^[3]

The Evidence for the Defense:

"The accused testified in his defense and denied all the charges in the three separate informations charging him of the crime of rape, claiming he has 'no knowledge about those charges, sir.' And pointing out that the incidents attributed to him happened while he was driving his jeepney; he usually leaves the house at 5:00 a.m. and comes home at 9:00 or 10:00 in the evening; he said: 'that I am driving my jeep and plying my route, sir. Aside (sic) her mother is in the house and also attending to her children.' (p. 10, T.S.N. Dec. 20, 1996)

"Contrary to Sharon's claim, he has no permanent alternate-driver substituting for him. Instead, he chooses his own replacement; he also denies that his live-in-partner, the mother of Sharon, gambles, pointing out that his income is hardly enough to provide for the needs of his family. But, he admits that for at least eight times, he had changed the jeepney he was driving and that he hangs around the racing club, especially on Wednesdays and Saturdays - to try his luck. (p.13, T.S.N., Dec. 20, 1996)

"He does not know why Sharon had charged him of rape when the fact of the matter was that he had not done anything wrong against Sharon whom he treated like her own daughter. The only reason he could think of why Sharon had accused him of rape was due to grudge Sharon's 'Lola Violy' had against him because he had broken the windows of the latter's house.

"Besides, he learned from his live-in partner that the latter's aunt, Lola Violy, was against his live-in relationship with Sharon's mother. He admitted, however, that since 1992 when he started living with Sharon's mother as his common-law wife, it was only after his arrest that he learned from his common-law wife that Sharon's 'Lola Violy' disliked him.

"When he asked Sharon why she accused him of rape, the grandmother